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**IN THE
COURT OF APPEALS OF INDIANA**

RICHARD L. HADLEY,

Appellant-Defendant,

VS.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 03A01-0602-CR-74

APPEAL FROM THE BARTHOLOMEW CIRCUIT COURT

The Honorable Stephen R. Heimann, Judge

Cause No. 03C01-0409-FB-1302

October 17, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Judge

Appellant-defendant Richard L. Hadley appeals his conviction for two counts of Dealing in Cocaine,¹ a class B felony. Specifically, Hadley argues that his convictions must be vacated because the trial court erred in denying his motion for relief from judgment. In essence, Hadley contends that the evidence established that his absence from trial was not knowing and voluntary. Finding that Hadley's motion for relief from judgment was properly denied, we affirm the judgment of the trial court.

FACTS

On September 13, 2001, Hadley sold four bags of cocaine to a confidential informant (C.I.) during a controlled buy. As a result, Hadley was charged with two counts of dealing in cocaine as a class B felony.

Approximately five days before his two-day jury trial was to begin, a police officer told Hadley that the State had strong evidence against him and that he was likely to be convicted of the charged offenses. In response, Hadley told the officer that he could not serve twenty years in jail.

Hadley failed to appear in court on June 28 and 29, 2005, for his jury trial. Hadley did not contact the trial court, his attorney or any law enforcement officials on either date to explain his absence. As a result, Hadley was tried in absentia on June 29, 2005, and was found guilty as charged. Following the issuance, Hadley was subsequently arrested on July 10, 2005.

¹ Ind. Code § 35-48-4-1(A)(1).

On August 3, 2005, Hadley filed a motion for relief from judgment. Hadley alleged that he was scheduled to appear as a witness in another criminal case in Marion County on June 28, and that he was prevented from attending his own trial because an armed gunman held him captive in a hotel room. Hadley also asserted that he did not know that his trial had been scheduled to last for two days.

On January 6, 2006, a hearing was held on Hadley's motion. It was determined that prior to trial, Hadley had been working as a C.I. for the Marion County Sheriff's Department (MCSD). Hadley has assisted the MCSD in making three controlled buys from a cocaine dealer by the name of Sumner. Although Sumner's case had at one time been scheduled for trial on June 30, 2005, it was continued prior to that date. Sumner appeared for a pretrial conference, at which time his trial date was continued. Hence, Sumner knew that he would not be tried on June 30.

At the hearing, Hadley testified that he knew that his jury trial was scheduled to commence on June 28, 2005, and that he was aware that it would be a two-day trial. Hadley also acknowledged that he had never been informed that he was scheduled to testify at Sumner's trial on June 28 and that he did not know while he was being held captive in the hotel room that he was to be a witness at Sumner's trial. Hadley testified that an armed gunman had held him captive in a hotel on June 28 from 6:00 a.m. to 4:00 p.m. and further claimed that the armed man returned on June 30 and again held him prisoner from 6:00 a.m. to 4:00 p.m. on that day. Hadley then testified that he had identified his captor as one of Sumner's associates from a photo array. Although Hadley had not been subpoenaed to

testify, he maintained that his assailant had kept him from testifying against Sumner on June 30, 2005.

The trial court denied Hadley's motion for relief from judgment on January 24, 2006, and Hadley was subsequently sentenced to the Indiana Department of Correction for seventeen and one-half years on each count of dealing in cocaine. The terms were to be served concurrently with credit for 342 days that he had served in jail prior to sentencing. Hadley now appeals.

DISCUSSION AND DECISION

In addressing Hadley's claim that the trial court erred in denying his motion for relief from judgment and in refusing to grant his request for a new trial, we note that in accordance with Trial Rule 60(B), a party may be relieved from a default judgment for a variety of reasons including "mistake, surprise, or excusable neglect[.]" a void judgment, or "any reason justifying relief from the operation of the judgment, other than those reasons" explicitly stated. T.R. 60(B)(8); State v. Willits, 773 N.E.2d 808, 811 (Ind. 2002). The grant or denial of a motion for relief from judgment is left to the sound discretion of the trial court. On review, this court will reverse only if it is established that the trial court abused its discretion. Id. An abuse of discretion occurs when the trial court's decision is clearly against the logic and effect of the facts and circumstances before it. Id.

Proceeding to the circumstances in this case, we note that a criminal defendant generally has a right to be present at all stages of the trial. Brown v. State, 839 N.E.2d 225, 227 (Ind. Ct. App. 2005), trans. denied. The trial court may presume that a defendant

voluntarily, knowingly and intelligently waived his right to be present and try the defendant in absentia upon a showing that the defendant knew the scheduled trial date but failed to appear. Ellis v. State, 525 N.E.2d 610, 611-12 (Ind. Ct. App. 1987). However, a trial court may not deny a defendant who has been tried in absentia an opportunity to explain his absence and thereby rebut the initial presumption of waiver. Id. The reviewing court considers the entire record to determine whether the defendant voluntarily, knowingly, and intelligently waived his right to be present at trial. Soliz v. State, 832 N.E.2d 1022, 1029 (Ind. Ct. App. 2005), trans. denied. A defendant's explanation of his absence is a part of the evidence available to a reviewing court in determining whether it was error to try him in absentia. Fennell v. State, 492 N.E.2d 297, 299 (Ind. 1986).

In this case, the evidence showed that Hadley knew of his trial date and realized that he faced a potentially lengthy sentence if convicted. Tr. p. 281, 290, 292, 294, 325. Hadley expressed a desire to avoid serving jail time for the offenses when he informed a police officer that he could not face twenty years of prison. Id. at 325. During the two-day period that had been scheduled for trial, Hadley did not contact the trial court, his attorney, or the police to explain his absence or seek assistance. Id. at 295, 298-99. Only after Hadley's arrest did his story about the armed man holding him hostage during court hours surface. Id. at 310-11, 324-25.

Finally, Hadley's testimony at the hearing contradicted the averments made in his motion for relief from judgment. Specifically, Hadley stated in his written motion that he was scheduled to be a witness in a criminal case in Marion County that was presumably

Sumner's case. However, Hadley testified at the hearing that he did not know he was to be a witness at Sumner's trial. Id. at 278. Additionally, Hadley averred in his motion that he did not know that his trial was scheduled for two days, but he testified at the hearing that he knew of the two-day setting. Id. at 294.

In light of Hadley's stated belief that he could not serve a lengthy sentence if convicted, his incredible explanation for his absence, and the contradictions between the allegations set forth in his written motion and his testimony in court, it was not against the logic and effect of the facts and circumstances for the trial court to find that Hadley voluntarily absented himself from the trial. As a result, we conclude that the trial court did not abuse its discretion in denying Hadley's motion for relief from judgment.

The judgment of the trial court is affirmed.

VAIDIK, J., and CRONE, J., concur.

